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a judicial impartiality on his part, but by a vigorous and carefully prepared presentation of his side of the case. It is doubtful, also, whether the theory that the state is the sole party in interest is sound. The injured parties as individuals have surrendered their natural right of punishment to the state, but it would seem that they retain an interest in the state's enforcement of that right. In some measure, then, the prosecutor represents them, and is under an obligation to accept their aid, that their wrongs may be requited and their future protection secured. Such participation cannot be demanded as an absolute right, but it seems desirable that the court should have discretion to allow it at the request of the district attorney.

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PAYMENT OF FORGED BILLS BY DRAWEE. — The rule has been laid down, and is regarded as well settled, that a drawee accepts or pays at his peril a forged bill in the hands of a holder in due course. *Price v. Neal*, 3 Burr. 1354. The most satisfactory explanation of this doctrine yet advanced seems to be that, as between two persons with equal equities, one of whom must suffer, the one having legal title should prevail. See 4 HARV. L. REV. 299. From this explanation writers on quasi-contracts have dissented, urging that the drawee should be allowed a recovery against the holder, as of money paid under a mistake of fact. See KEENER, QUASI-CONT. 154-158. In support of this latter contention it is pointed out that the holder suffered his loss when he gave value for a worthless piece of paper, and that in retaining the money paid him by the drawee, he simply makes his loss good at the expense of one against whom he has acquired no claim whatever; in short, that the equity of the holder is an equity against his transferrer alone, and thus is not involved in the case at all. This criticism of the theory of "equal equities," as explaining the doctrine of *Price v. Neal*, seems to proceed on a misinterpretation. There are no equal equities involved, in the sense of equitable claims against the same person in respect to the same *res*. The doctrine simply means that, as between parties equally meritorious, a legal title will not be disturbed. Both parties have paid out their money under an innocent mistake as to the same fact; but the holder now has legal title to the money he has received or, in case the bill has been only accepted, to the contract obligation to pay. Consequently there is no reason in equity for depriving him of that legal title.

If, however, for any reason the parties are not equally meritorious, the principle does not apply. In a recent Washington case the holder bought without inquiry or identification checks presented by an unknown man. The drawee paid the checks, but was allowed to recover the amount when it appeared that the checks were forged. *Canadian Bank v. Bingham*, 71 Pac. Rep. 43. The holder's negligence made him less meritorious than the drawee, and hence the case fell outside the doctrine of *Price v. Neal*. If however both parties are equally negligent, it is difficult to see how the plaintiff can recover.

The cases where the transaction between the holder and the drawee is not a payment but a sale should be carefully distinguished. In such cases the holder impliedly warrants the genuineness of the instrument and should be held to his warranty. *Fuller v. Smith*, 1 C. & P. 197.